

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13

ILLINOIS CENTRAL SCHOOL BUS, LLC,

Employer

and

Case 13-RC-127807  
Stipulated

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL UNION NO. 777,

Petitioner

**HEARING OFFICER'S REPORT ON OBJECTIONS**

This report contains my findings and recommendations regarding the Employer's objections to conduct affecting the results<sup>1</sup> of the election<sup>2</sup> conducted under the direction of the Regional Director for Region 13 of the National Labor Relations Board on June 4, 2014, among the Employees in the Stipulated Unit.<sup>3</sup> On June 10, 2014, the Petitioner filed timely objections to the conduct affecting the results of the election, a copy thereof being duly served upon the Petitioner. A copy was served on the Employer and a copy is attached to this report. On July 14, 2014, following an investigation, the Regional Director issued his Report on Objections and Notice of Hearing ordering the parties to appear before the designated Hearing Officer to present relevant evidence. Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a hearing was held in Chicago, Illinois on July 23 and 24, 2014, before the undersigned Hearing Officer. During the hearing, the parties had a full

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<sup>1</sup> The tally of ballots shows that there were approximately 139 eligible voters. 51 ballots were cast for the Petitioner, 72 ballots were cast against the participating labor organizations, there were 0 void ballots, and 1 challenged ballots, which was not sufficient in number to affect the results of the election.

<sup>2</sup> The election was conducted pursuant to a petition filed on May 1, 2014, and a Stipulated Election Agreement approved on May 12, 2014. The payroll eligibility date for the election was May 3, 2014.

<sup>3</sup> All full-time and regular part-time drivers and monitors employed by the Employer at its facility currently located at 2739 West 139th Street, Blue Island, Illinois, but excluding all other employees, managers, dispatchers, assistant dispatchers, lot/yard men, mechanics, office clerical employees and guards, professional employees and supervisors as defined in the Act.

opportunity to be heard, to examine and cross-examine witnesses, and to produce all relevant evidence bearing on the objections. After careful consideration<sup>4</sup> of the record and all evidence contained therein, I overrule all of the Petitioner's Objections.

## **I. BURDEN OF PROOF**

Representation elections are not lightly set aside. *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000). A Board-run representation election is presumed valid and the burden is on the objecting party to prove that the election is invalid. *NLRB v. Mattison Mach. Works*, 365 U.S. 123, 124 (1961) (per curiam); *Delta Brands, Inc.*, 344 NLRB 252, 252-53 (2005). The proper test for evaluating conduct of a party is an objective one—whether it has “the tendency to interfere with the employees' freedom of choice.” *Cambridge Tool Mfg.*, 316 NLRB 716 (1995). The Board will only interfere when the registration of free choice is shown by all circumstances to have been unlikely. *The Liberal Market, Inc.*, 108 NLRB 1481, 1482 (1954). In determining whether a party's misconduct has the tendency to interfere with employees' freedom of choice, the Board considers: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among the employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election; (5) the degree to which the misconduct persists in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct among the bargaining unit employees; (7) the effect, if any, of misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; and (9) the degree to which the misconduct can be attributed to the party. *Taylor Wharton Div. Harsco Corp.*, 336 NLRB 157, 158 (2001) (citing *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986)).

The Petitioner filed five objections.<sup>5</sup> Two of the objections alleged coercive electioneering during the morning election period. First, a school bus was parked outside the polling place and displayed antiunion signs; and second, contract manager Cindy Sosnowski was outside the polling place “engaging employees” and electioneering. Objections three and five apparently relate to the same set of circumstances involving a downed power line on Harrison Street during the afternoon voting session when the contract manager Sosnowski was present and

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<sup>4</sup> The factual findings herein are based on the record as a whole, including the undersigned's observation of witnesses and examination of exhibits received in evidence. All testimony has been reviewed and evaluated in light of the demeanor of witnesses, the logical probability of testimony, and the record as a whole. Where any single witness has testified in contradiction to the findings contained herein, his or her testimony has been discredited as being either in or of itself not worthy of credence or because it conflicted with the weight of other credible evidence. *Ryder Mem'l. Hosp.*, 351 NLRB 214, 220 n.2 (2007); *Walker's*, 159 NLRB 1159, 1159 n.1 (1966).

<sup>5</sup> The Petitioner also elicited evidence at the hearing of other putative instances of objectionable conduct. The Petitioner did not offer evidence that any of the conduct alleged was newly discovered and previously unavailable to it so as to excuse its failure to file timely objections. *Board Rules and Regulations* 102.69 (a) (objections must be filed within 7 days of the tally of ballots); *Local Joint Executive Bd. of Las Vegas*, 318 NLRB 829, 837 (1995) (objecting employer not allowed to litigate voter list doctrine without having timely specified that factor in an objection). However, the Board allows consideration of conduct that has been fully litigated and is sufficiently related to the objections timely filed even where the objector did not specifically file Objections to that conduct. See *Nichols House Nursing Home*, 332 NLRB 1428, 1430 n.6 (2000). Therefore, I will address the Petitioner's untimely objections here.

“surveying” the area outside the polling place during the afternoon election period, and the downed power line prevented employees from entering the polling place by car or bus from 12:05 PM to 1:30 PM. The Petitioner’s last (fourth, as filed) objection alleged that the election was held in a location other than the stipulated “Upstairs Safety Training Room.” As the party raising objections, the Petitioner bears the burden of proving that objectionable conduct warrants setting aside the election.

## **II. BACKGROUND**

### *A. The Employer’s Business and Relationship with the Petitioner*

The Employer, Illinois Central School Bus, is located in Blue Island, Illinois. (Tr. 18, 157, 205, 298, 370.)<sup>6</sup> Using its 109 buses, the Employer provides school district bus transportation for students, including special needs students. (Tr. 216, 298, 404.) The Petitioner, Teamsters Local No. 777, currently represents employees at several of the Employer’s facilities. (Tr. 148.) About March 2014, the Petitioner began organizing the Employer’s Blue Island, Illinois drivers and monitors, ultimately filing a representation petition on May 1, 2014. (Tr. 159; BX 1(b).) The Employer employs approximately 110 bus drivers and 30 monitors. (Tr. 298.)

### *B. The Layout of the Employer’s Facility*

The Employer’s office building and main parking lot in Blue Island, Illinois are bounded by Harrison Street to the East, 140th Street to the South, and 139th Street to the North. (Tr. 43, 76, 95, 275, 300; HOX 1.) Harrison Street has two driveways to the Employer’s property: one for ingress and one for egress. (Tr. 301, 330.) Smaller buses are parked in the parking lot attached to the office, which is also known as the Chicago South Terminal; employees can park their personal vehicles there while on duty. (Tr. 298, 300.) There is another parking lot for long school buses on 140th Street, which is known as the East Lot. (Tr. 96, 273, 298.)

The Employer’s facility is laid out as follows: the two-story office building has two entrances--located on the east side and west side of the facility. (Tr. 300.) Harrison Street is the east side of the building; the main entrance is the west side—opposite Harrison Street. (Tr. 300, 301.) If one enters the main entrance (west entrance) and walks straight, one enters the employee break room on the first floor. (Tr. 301.) If one enters the main entrance and turns left, there is a stairway that leads to the second floor. (Tr. 303.) If one enters the main entrance and turns right, there is just a dead end wall. (Tr. 303.) If one enters the facility from Harrison Street (east entrance) and walks straight, one enters a hallway and goes past a stairway that leads to the second floor. (Tr. 302.) During the election, a Board agent sat near the Harrison Street (east) stairway and directed employees to use the other (west) stairway to access the second floor to vote. (Tr. 69-70.)

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<sup>6</sup> The transcript will be cited as “Tr. [page];” the Board’s Exhibits will be cited as “BX [page];” the Petitioner’s exhibits will be cited as “PX [page];” the Employer’s exhibits will be cited as “EX [page];” the Hearing Officer’s exhibits will be cited as “HOX [page];” and joint exhibits will be cited as “JX [page].”

Also on the first floor is the dispatch office, which is separated from the employee break room by a wall and a sliding window used by drivers to talk to the dispatchers. (Tr. 303.) Sosnowski's office is behind the dispatch office, the Regional Operations Manager's Office, and the Shop Manager's Office. (Tr. 303.) She cannot see into the employee break room from her desk, but, she could if she stood in the doorway of her office. (Tr. 304.) The two stairways—from the main entrance and from the Harrison Street entrance—lead to the same large room on the second floor. (Tr. 305.) The Petitioner maintains that this is the "Upstairs Safety Training Room" referred to in the stipulated election agreement. (JX 1; Brief of Petitioner, pp. 9-14.)

At the top of the stairs on both sides is a sign that reads "Safety Dept. and Human Resources." (PX 2.) The second floor layout is similar to the first floor: there are three offices on the second floor with a wall separating the offices from the large room at the top of the stairs. (Tr. 305.) Unlike the first floor, the second floor dividing wall does not have a window between the large room and the office next to it. (Tr. 305.) The office next to the large room at the top of the stairs is occupied by Crystal Davis, Safety Coordinator. (Tr. 306.) Davis also maintains all of the personnel files. (Tr. 310, 383.) Behind Davis's office is an empty office used for storage. (Tr. 307.) Next is the office of the payroll clerk. (Tr. 308.) The last room is the room where the voting was took place. (Tr. 49, 259.) This is the room that the Employer maintains is the "Upstairs Safety Training Room" referred to in the stipulated election agreement. (JX 1; Brief of Employer, pp. 13-17.)

### III. THE OBJECTIONS

The conduct underlying the Objections in this case occurred during the critical period<sup>7</sup>—on the day of the election itself. After considering all of the evidence, I overrule the Union's objections in their entirety.

**Objection #1** *During the AM election period, Bus 1198 was parked outside the polling place location visibly displaying "vote no, no union, no strikes, no union rules" to the eligible voters as they walked into the building to vote, in order to intimidate and persuade the voters from supporting the union.*

"When faced with evidence of impermissible electioneering, the Board determines whether the conduct, under the circumstances, is sufficient to warrant an inference that it interfered with the free choice of the voters." *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118, 1118-1119 (1982), enfd. 703 F.2d 876 (5th Cir. 1983). The Board considers (1) whether the conduct occurred within or near the polling place, (2) the extent and nature of the alleged electioneering, (3) whether it is conducted by a party to the election or by employees, and (4) whether the electioneering is conducted within a designated no electioneering area or contrary to the instructions of the Board agent. *Id.*

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<sup>7</sup> The critical period for a stipulated election begins after the filing of the petition and extends through the election. *Goodyear Tire and Rubber Co.*, 138 NLRB 453, 455 (1962).

According to the stipulated election agreement, the morning voting period was scheduled for 8:00 a.m. to 10:30 a.m. on June 4, 2014. (JX 1.) Mechanic Nick Sanchez (who is not a unit member) placed a sign on a bus parked along the Employer's fence with a sign reading "vote no, no union, no strikes, no union rules" shortly after 5:00 a.m. on the morning of the election, as he had every morning beginning May 28, 2014. (Tr. 319-20, 372-73, 378.) Contract manager Cindy Sosnowski intended, but failed, to tell Sanchez not to hang the sign on June 4—the day of the election. (Tr. 321.) The bus was parked facing Harrison Street—either 30 (according to James Glimco) or 100 (according to Jennifer Schaefer) feet from the Employer's facility. (Tr. 64, 163, 318.) The sign faced away from the facility; it was not visible from the polls, but an employee entering the facility's parking lot from Harrison Street would have been able to see it. (Tr. 64, 87-88, 151, 163.) The Petitioner's witnesses reported seeing the "vote no, no union, no strikes, no union rules" sign posted on the bus before the 8:00 a.m. – 10:30 a.m. voting session began, following the pre-election conference, and as late as about 8:50 a.m. (Tr. 38, 89, 111-12, 139-140, 186, 255, 281, 283.) Alerted between 8:00 a.m. and 9:00 a.m. that the "vote no, no union, no strikes, no union rules" sign was hanging on the bus, contract manager Sosnowski instructed mechanic Sanchez to take down the sign. (Tr. 319, 322, 374.)

The record evidence indicates that the Employer that was responsible for the sign being posted, albeit inadvertently. Yet, because the "vote no, no union, no strikes, no union rules" sign was not visible from the polls, was 30 feet to 100 feet away from the polls, and there was no testimony that the Board Agent established a specific no-electioneering zone, I find that its display did not constitute improper electioneering. See *Lily Transportation Corp.*, 352 NLRB 1028, 1028 n.2 (2008) (two member case; union posted banner on RV alongside hotel that was visible to employees entering to vote). Therefore, I recommend that this objection be overruled.

**Objection #2** *During the morning election period and outside the entrance to the polling place, Cindy Sosnowski, contract manager, was engaging employees and electioneering.*

As above, the test explained in *Boston Insulated Wire & Cable Co.*, 259 NLRB at 1118-1119 applies to this alleged instance of electioneering.

Union President James Glimco, who was stationed in or near a tent on the north-south Harrison Street, that was "pretty far" from the Employer's facility, beginning 20-30 minutes after the election's start and then intermittently for a total of 45 minutes of the two-and-a-half hour morning voting session, witnessed contract manager Sosnowski come and go in the parking lot near the main entrance on the opposite side of the building from where the tent was pitched; she spoke to a total of 8 to 9 employees for 5 to 10 minutes each. (Tr. 31-34, 73, 92, 94.) Glimco could not hear anything that was said by Sosnowski or the employees. (Tr. 60.) Glimco did not know the names of any of these employees; he stated that he recognized their faces from organizing meetings. (Tr. 32.)

Union Secretary-Treasurer Gregory Glimco testified that he saw contract manager Sosnowski talking to two or three employees whose names he did not know the morning of June 4 after the start of the election. (Tr. 126-27.) Glimco could not hear what Sosnowski and the employees were saying. (Tr. 127.) He took a photograph that he identified as Sosnowski talking to two of these employees for about 15 minutes at about 9:00 a.m. (Tr. 129, 133; PX 7.)

That photograph was later identified by Sosnowski and mechanic Sanchez as portraying Sosnowski with mechanic Sanchez and a temporary, non-unit mechanic as they observed the emergency response to a downed power line on Harrison Street in the afternoon on June 4. (Tr. 337, 376.)

Union organizer Schaefer did not see contract manager Sosnowski with unit employees outside on the morning of the election. (Tr. 191.) However, on direct examination by Petitioner's counsel, employee Paula Love-Dunlap maintained that she witnessed Sosnowski talking to 2-3 "employees" for 10 minutes the morning of the election beginning between 10:15 a.m. and 10:30 a.m. (Tr. 232-36.) Love-Dunlap did not know the names of any of these employees; she stated that she knew bus drivers by their bus numbers and faces, not their names. (Tr. 232-33, 272.) Counsel for the Petitioner did not elicit from his witness any bus numbers to identify the employees. (Tr. 233.) On cross-examination, Love-Dunlap clarified that she saw Sosnowski talking to two unidentified bus drivers only in passing as they walked out the east door and to two mechanics near the garage for 10 minutes before Sosnowski re-entered the building. (Tr. 269-71.) Love-Dunlap did not hear anything that was said between Sosnowski and the presumed bus drivers or the mechanics. (Tr. 273.)

On direct examination, contract manager Sosnowski stated that she did not recall discussing the election or the Union with anyone during the election. (Tr. 326-27.) In testimony that was led, Sosnowski testified that, after leaving the garage to ask mechanic Nick Sanchez to take down the sign on the bus, she did not specifically recall leaving her office, but may have left her office the morning of June 4, 2014, to attend to her duties and she may have visited the vending machine. (Tr. 325-26.) Yet, Sosnowski also admitted that she passed out candy and gum in the first-floor driver's room that morning, which would, obviously, entail leaving her office, but not the building. (Tr. 335-36.)

The Petitioner's evidence does not establish a prima facie case in support of its objection. The Petitioner has not presented any evidence whatsoever of electioneering. No witness heard Sosnowski discussing the Union or the election with a unit employee. I recommend overruling this objection.

The Petitioner also elicited evidence from unit employee Love-Dunlap regarding contract manager Sosnowski's conduct<sup>8</sup> in the first-floor driver's room during the morning voting session of the election. (Tr. 220-222, 225.) Love-Dunlap testified that, when Love-Dunlap descended the stairs from the polling place, Sosnowski and a group of employees ended a conversation that Love-Dunlap did not overhear. Tr. 227. Love-Dunlap also testified that Sosnowski passed out candy and gum in a white pail in the driver's room and asked employees whether they wanted candy or gum. (Tr. 221, 225.)

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<sup>8</sup> This is also not a timely-filed objection. The Petitioner's filed objection was limited to Sosnowski's conduct that allegedly occurred *outside* the facility during the morning voting period. The Petitioner has made no showing that the conduct complained of here was newly discovered and previously unavailable to it. See *Local Joint Executive Bd. of Las Vegas*, 318 NLRB at 837.

First, there is no record evidence that Sosnowski's conversations in the drivers' room related to the election or the Union.<sup>9</sup> See *J.P. Mascaro & Sons*, 345 NLRB 637, 638-39 (2005). Second, the Board has held that providing food of de minimis value outside the polling area is not impermissible electioneering. *Nu Skin Int'l, Inc.*, 307 NLRB 223, 225 n. 8 (1992) (union-provided t-shirts and picnic lunch); *Lach-Simkins Dental Laboratories, Inc.*, 186 NLRB 671, 671-72 (1970) (employer-provided lunch). I recommend overruling this new and untimely objection.

Nor does Sosnowski's intermittent presence in the parking lot near the west entrance amount to surveillance, as suggested in Petitioner's brief (p. 5) but not filed in a timely objection.<sup>10</sup> The record evidence indicates that, during the morning voting session, Sosnowski went outside the building to the parking lot intermittently, including to talk to the non-unit mechanics, where she encountered other employees. According to James Glimco, this activity totaled 45 minutes, at most, over the course of two and a half hours. There is no evidence that Sosnowski engaged in any intimidating behavior, that she discussed the Union or the election, and she was hardly a "continued presence" at a location where the employees are required to pass in order to enter the polling place. See, e.g. *Performance Measurements Co.*, 148 NLRB 1657, 1659 (1964). In addition, there was also no record evidence of "prolonged conversations" between the Employer's representatives and voters waiting to cast ballots. *Milchem, Inc.*, 170 NLRB 362, 362 (1968). I recommend overruling this untimely objection as well.

**Objection #3** *During the afternoon election period and outside the building entrance to the polling place, Cindy Sosnowski, was present and surveying the area.*

The "continued presence" of an employer's supervisor at a location where the employees are required to pass in order to enter the polling place is improper conduct that interferes with employees' freedom of choice in an election, *Performance Measurements Co.*, 148 NLRB 1657, 1659 (1964) (company president stood by the door to the election area so that it was necessary for employees to pass within two feet of him to access the polls); see *Electric Hose and Rubber Co.*, 262 NLRB 186, 216-17 (1982) (supervisor standing 10 to 15 feet from the entrance to the voting areas without explanation effectively conveyed to employees the impression that they were being watched).

According to the stipulated election agreement, the second voting session was scheduled to begin at 12:00 p.m. and end at 4:00 p.m.<sup>11</sup> (JX 1.) Shortly after Noon, a cherry picker took down an overhead electric power line across the street from the Employer's facility. (Tr. 41, 118; 168.) Commonwealth Edison arrived soon afterward, followed by the police. (Tr. 41-42,

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<sup>9</sup> The same conclusion applies to Petitioner's arguments (Brief of Petitioner, p. 3.) regarding the Employer's Vice President of Operations Rick Villines' conversation with bus monitor Daniel \_\_\_\_\_. Daniel asked Villines questions about Villines' family and golf game. (Tr. 246-47.) Villines did not initiate the conversation and he did not discuss the election or the Union with Daniel. (Tr. 247.) In no way can this brief, harmless conversation be characterized as "electioneering," as claimed by the Petitioner. See *J.P. Mascaro & Sons*, 345 NLRB at 638-39.

<sup>10</sup> Objections must be filed within 7 days of the preparation of the tally of ballots. *Board Rules and Regulations* 102.69 (a).

<sup>11</sup> The following facts are relevant for both Objection #3 and Objection #5.

119-20; 242.) The police blocked Harrison Street at 139th Street to about 30 feet before 140th Street. (Tr. 42-43. 67; 168.)

According to James and Gregory Glimco and employee Paula Love-Dunlap, the police would not allow buses, cars, or pedestrians to enter Harrison Street from either direction; they had to turn around or keep driving. (Tr. 43-44, 85, 96, 121, 248, 250, 254, 290.) There was a line of buses at the 140th Street entrance to Harrison Street that were not allowed to enter the street. (Tr. 46, 120.) Union Organizer Jennifer Schaefer witnessed buses being turned away, but not pedestrians. (Tr. 170.)

Contract manager Cindy Sosnowski went to lunch with dispatcher Maria Mendez, a non-unit employee, about Noon. (Tr. 327.) When she returned from lunch between 12:30 p.m. and 1:15 p.m., Sosnowski saw the police had blocked off Harrison Street at 139th Street. (Tr. 328.) Emergency responders were already in place. (Tr. 329.) Dispatcher Mendez asked the police to let them in; the police complied. (Tr. 330.) Sosnowski talked to a police officer before parking her car; she thought that he agreed to let the buses enter the parking lot through what would normally be the Harrison Street exit gate. (Tr. 330.) Sosnowski returned to her office. (Tr. 331.)

The Employer started getting radio and telephone calls from bus drivers complaining that they were not able to access the facility's parking lot, so Sosnowski went back outside and spoke to the police officer again. (Tr. 331.) Sosnowski was stationed at 139th Street and Harrison Street; she saw the buses that were lined up enter the parking lot; she helped direct one bus around a police squad car. (Tr. 332-33.) Sosnowski asked the police officer to tell the buses that they could enter the East Lot from Kedzie Street; the dispatchers relayed the same message to the drivers by radio. (Tr. 335.)

James Glimco stated that he saw contract manager Sosnowski come outside to talk to the police about 15-20 minutes after the power line went down—at 12:20 p.m. (Tr. 44, 83, 102.) Sosnowski was standing at the corner of 139th Street and Harrison Street talking to police. (Tr. 93, 171; HOX 1.) After she spoke to them, the police allowed 1-3 buses to enter Harrison Street and turn into the Employer's facility's parking lot. (Tr. 45, 99, 100-01, 142, 171.) The Petitioner's witnesses did not hear what was said. (Tr. 136, 188.) According to James and Gregory Glimco, other than the buses they saw enter after Sosnowski spoke to the police officer, the Harrison Street driveway entrances were inaccessible until about 1:30 p.m. and Harrison Street was the only way to enter the parking lot to reach the Employer's facility and the polls. (Tr. 44; 87-88; 119-120, 188.)

Gregory Glimco testified that about 12:20 p.m. he took a photograph of Sosnowski with two people that he referred to as employees during the power line incident and blockade. (PX 6; Tr. 122-27.) He did not know the "employees'" names or their job titles. (Tr. 122, 134-35.) Union organizer Schaefer testified that the photograph showed "employees" with whom she had interacted for many months, but she did not provide names for them. (Tr. 171; PX 6.) Contract manager Sosnowski clarified that Petitioner's Exhibit 6 was a photograph of her, dispatcher Maria Mendez, and a bus driver of whose identity she was not certain. (Tr. 341; PX 6.) The photograph showed Mendez and Sosnowski as they returned from lunch. (Tr. 341.) Gregory



Glimco could not hear what Sosnowski and the employees were saying when he took the photograph. (Tr. 136.)

Union organizer Schaefer and employee Paula Love-Dunlap stated that they saw Sosnowski talking to 8 to 10 (or more, per Love-Dunlap) “employees” outside the facility while the police blockade was in effect. (Tr. 172, 190, 240.) Love-Dunlap saw Sosnowski talking to unidentified bus drivers in their buses at Harrison and 139th Street, but could not hear them. (Tr. 238-40, 273, 277, 279.) Schaefer did not testify as to the substance of the conversations between Sosnowski and employees—or whether she could even hear them. Schaefer did not know the names of the employees she saw talking with Sosnowski during the afternoon voting period on June 4, 2014. (Tr. 191.)

Once again, the evidence elicited at the hearing does not support the objection on its face. The witnesses testified that the same hour and a half or so period in which Harrison Street was blockaded because of the downed power line is the time during which contract manager Sosnowski was intermittently seen at the intersection of 139th Street and Harrison Street talking to the police and bus drivers who were dealing with the police blockade. I credit the testimony of all of the witnesses on this point. Yet, being that Sosnowski was well outside the second floor of the facility where the voting occurred, there is no evidence that she had a direct view of the voting area, and Sosnowski’s presence was both intermittent and brief, the record does not support the Petitioner’s contention that Sosnowski engaged in objectionable conduct.

Further, if the Petitioner’s witnesses are correct, Harrison Street was impassable by buses, cars, and, perhaps, pedestrians while the power line was down—so no employees could enter to vote during the hour-and-a-half that the police blockade was in effect. The Petitioner cannot have it both ways—either Sosnowski was surveilling voters who entered the facility or no voters were able to enter the facility; both cannot be true. Significantly, Union President James Glimco did not see Sosnowski outside the facility once the police blockade was lifted at about 1:30 p.m. (Tr. 83.), which suggests that Sosnowski’s sole reason for being outside was managing the Employer’s business during the blockade. I recommend overruling this objection.

**Objection #4** *The election was conducted in a location other than the one that was stipulated to. The Union strongly objected to this at the pre-election conference. The stipulated place was “Upstairs Safety Training Room.” The election was held in a room that made you walk through this room and go past the Human Resources Dept and into a storage area to vote.*

“Not every breach of an election agreement is a basis for a new election. Where, however, the breach is ‘material or prejudicial’ the Board will set aside the election.” *T & L Leasing*, 318 NLRB 324, 325-26 (1995) (Regional Director changed mail ballot election to manual election sua sponte); *Grant’s Home Furnishings*, 229 NLRB 1305, 1305 (1977) (employer refused to allow the election to proceed because the Board agent was late).

On the second floor of the Employer’s Blue Island, Illinois facility, there is a hallway with offices connecting the large room at the top of the stairs to the room at the end of the hall where the voting took place. (Tr. 23, 48, 212, 307-308.) The offices were locked and empty on

the day of the election. (Tr. 28, 118, 141, 261, 314.) The office doors had windows that were normally covered in construction paper. (Tr. 395.) Safety coordinator Davis, however, had created a peephole in her construction paper window covering. (Tr. 395, 412.) Yet, on the day of the election, the Board Agent covered each office window with additional paper obtained from the Employer's contract manager. (Tr. 28, 49, 57, 141, 262, 397, 413, 419.) Therefore, it was not possible to see inside. (Tr. 193, 262, 317.) Also, someone blocked the doorways with an "X" made of masking tape. (Tr. 312, 398.)

Based on the advice of union organizer Jennifer Schaefer, Union Secretary-Treasurer Gregory Glimco had negotiated in the stipulated election agreement that the location of the June 4, 2014 representation election would be the "Upstairs Safety Training Room." (Tr. 132, 161-62; JX 1.) Schaefer based her recommendation to Glimco on the advice and consensus of unnamed "employees." (Tr. 162.) Prior to the pre-election conference on June 4, 2014, neither Glimco nor Schaefer had ever been inside the Employer's facility. (Tr. 133, 185-86.)

When the parties arrived for the pre-election conference, the large room at the top of the stairs contained safety posters and safety performance signs, a sign urging employees to keep the room clean, a white board, a black board, a mock school bus, a school bus bench, and wheelchair. (Tr. 65, 114, 164, 208-209, 212, 338, 399, 409; PX 4, PX 5.) Crystal Davis, the Employer's Safety Coordinator, testified that the school bus bench and wheelchair equipment are used for drivers who choose to refresh their safety skills voluntarily and hands-on safety training. (Tr. 399, 404, 406, 407-8, 409.) The room is used primarily for large group safety training meetings, which take place over the course of 2-3 days, and as an employee break room. (Tr. 305, 399, 400, 404-5, 406, 409.) Employee Paula Love-Dunlap testified that she had attended 3-6 safety trainings of 25 or more other employees in the room in her year of employment with the Employer. (Tr. 207-9.)

Upon the parties' arrival for the pre-election conference, the room at the end of the hallway was set up for the election and contained filing cabinets, the voting booth, and fewer than 10 chairs. (Tr. 152-53, 155, 189.) It did not contain the type of safety equipment and signs found in the room at the top of the stairs, a blackboard, or white board. (Tr. 150.) The room at the end of the hallway is primarily used for training applicants who want to become eligible for a commercial driver's license ("CDL"). (Tr. 385-86.) The training takes the form of reviewing books and watching videos prior to the administration of a written test by the Illinois Secretary of State. (Tr. 386-87.) An applicant who already has a CDL does not take the test, but needs to obtain school bus driver and passenger endorsements on the license, which involves watching videos in the same room and over-the-road training. (Tr. 388-90.) Bus driver-employees randomly selected for retesting by the State of Illinois are also provided with non-mandatory training in the room at the end of the hallway. (Tr. 392-93.) Employee Love-Dunlap, who testified that she had been a school bus driver for two other employers prior to her Illinois Central School Bus Company employment (Tr. 206.), has never had any training in the room where voting took place. (Tr. 261.)

At the pre-election conference, the Petitioner's representatives objected that the room set up by the Board agent was not the one to which the parties had stipulated. (Tr. 21.) According to Union President James Glimco, the Employer's Vice-President of Operations Rick Villines

responded we're going to have it somewhere else; we're not going to do it in this room. (Tr. 21.) Gregory Glimco testified that the Board agent in charge of the election stated that company decided it was going to be in the other room. (Tr. 114.) These two witnesses did not corroborate one another's testimony—that is, Gregory Glimco did not testify as to Villines' alleged statement and James Glimco did not testify as to the Board agent's alleged statement. Further, Union organizer Schaefer testified that she attended the pre-election conference, but she did not corroborate either of these statements. (Tr. 162.) Although I credit these witnesses, I cannot agree with the Petitioner (Brief of Petitioner, pp. 10-11.) that this evidence proves that the Employer unilaterally changed the location of the voting room. It appears that both the Board agent and Villines were simply conveying information as to where the voting would actually occur.

Moreover, the record evidence does not support the Union's contention (Brief of Petitioner, p. 12.) that the room where the voting occurred was not the "Upstairs Safety Training Room." Rather, it appears that the parties had different rooms in mind. Safety training clearly occurs in both rooms. Union organizer Schaefer provided hearsay testimony that unnamed employees informed her by consensus that the room at the top of the stairs was the "Upstairs Safety Training Room," (Tr. 186.) but employee Love-Dunlap called the room at the top of the stairs the "driver's room" and "safety driver's room" at the beginning of her testimony. (Tr. 207.) It was not until after several questions in which Counsel for the Petitioner referred to the room at the top of the stairs as the "training room" that Love-Dunlap followed suit: calling the room the "training room" in her response. (Tr. 210.) Safety coordinator Davis called the room at the end of the hallway the "safety training room" and the room at the top of the stairs the "break room." (Tr. 406, 409.) Under the totality of the evidence, I cannot conclude that the Employer breached the stipulated election agreement by unilaterally changing the location of the voting room.

The Petitioner argues (Brief of Petitioner, p. 12-14.) that using the room at the end of the hallway rather than the large room at the top of the stairs was objectionable conduct because (1) management normally occupied these offices and employees were not affirmatively told that the offices' usual occupants were not in them, yet employees were required to walk past those offices to get to the polling place, (2) the room at the end of the hallway was the site of Employer-sponsored antiunion meetings in the three weeks leading up to the election, and (3) there were no signs directing employees to the room at the end of the end of the hallway.

First, as to the Petitioner's contention that because voters had to walk past management offices to access the polling place there was "substantial prejudice and possible interference with employee free choice," (Brief of Petitioner, p. 13.), the Petitioner's own witnesses testified that the offices were locked and the windows on the doors were completely covered with paper. (Tr. 28, 49, 57, 118, 141.) Moreover, no employee reported seeing managers, supervisors, or Employer's agents on the second floor during the polling periods. (Tr. 50.) The Petitioner cited no Board authority that supports its contention that the mere act of walking past empty, locked management offices with the windows completely covered and the doors blocked off with tape to vote interferes with employee free choice.

Second, as to Petitioner's argument—again, unsupported by Board authority—that the room at the end of the hall was tainted with intimidation (Brief of Petitioner, p. 14.) because the Employer held “vote no” meetings in that room in the three weeks leading up to the election, there is no record evidence establishing—or even suggesting—that the content of the meetings themselves interfered in employee free choice. Employee Love-Dunlap's description of the meetings' substance (Tr. 292.) is standard pre-election antiunion fare, protected by Section 8(c) of the Act. See *Newburg Eggs, Inc.*, 357 NLRB No. 171, slip op. at 3 (Dec. 31, 2011) (employer may legitimately assert its views that employees would be better off without a union and should vote no so long as the employer does not inform employees that it will not bargain with the union in good faith or misrepresent the law). The Petitioner fails to explain how, if the meetings themselves did not interfere with employee free choice, voting in the same room where the meetings were held could interfere with employee free choice.

Third, the Petitioner contends (Brief of Petitioner, p. 13-14.) that a lack of signs directing employees to the room at the end of the hallway to vote “created further possible interference with employee choice.” Yet, even had the Board agent failed to post any voting signs designating a polling area, it would not be objectionable conduct. *Pacific Grain Prods.*, 309 NLRB 690, 690-691 (1992). What is more, Union President James Glimco testified that the Board Agents put up signs in the polling area (Tr. 65.); Union Secretary-Treasurer Gregory Glimco testified (Tr. 154.) that there were signs on the outside door of the facility and inside directing to go up the stairs to vote; and Union organizer Jennifer Schaefer saw (Tr. 201.) NLRB signs with arrows inside and outside the facility. Finally, employee Paula Love-Dunlap reported (Tr. 295.) that when she reached the room at the top of the stairs a Board agent wearing a Board badge told her that he was with the Board and directed her through the door and down the hall to vote. The Petitioner's argument on this point is flatly contradicted by both Board law and the record evidence. I recommend overruling this objection.

**Objection #5** *During the election period and outside the entrance to the polling places, Harrison Street was shut down by the police approximately between 12:05 pm and 1:30 pm. The entrance for the employee parking lot and all the buses is on this street. Traffic was prevented from entering or exiting this area. The stipulated time for the second session of the election was between 12:00 pm and 4:00 pm.*

The Board has held that an election should be set aside where severe weather conditions on the day of the election reasonably denied eligible voters an adequate opportunity to vote and a determinative number did not vote. *Baker Victory Servs., Inc.*, 331 NLRB 1068, 1068 (2000) (snowstorm). The focus is not on the circumstances of why a particular individual was unable to vote, but instead on whether the election was conducted properly and in such a manner as to assure that all employees were given a sufficient opportunity to vote. *V.I.P. Limousine*, 274 NLRB 641, 642 (1985) (snowstorm).

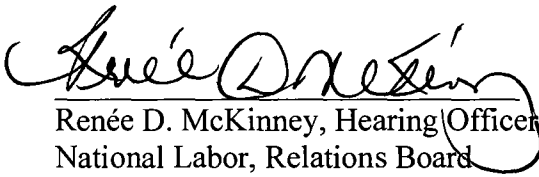
As in cases involving weather conditions alleged to deny eligible voters the opportunity to vote, the conditions faced by voters here was beyond the control of the parties and the Board agents. However, the record evidence in this case does not establish that eligible voters were denied a sufficient opportunity to vote. Although I credit the Petitioner's account that except for 1-3 buses, no vehicles or pedestrians were able to enter the Employer's facility for an hour and a

half, the Petitioner has not shown that a determinative number of eligible employees did not vote. To the contrary, out of approximately 139 eligible voters, 51 ballots were cast for the Petitioner, 72 ballots were cast against the Petitioner, there were 0 void ballots, and there was 1 challenged ballot: 123 eligible employees voted. (BX 1(b).) The Petitioner's only evidence that any eligible employees were unable to vote is a hearsay conversation between Union President James Glimco and three presumed bus drivers whose names Glimco does not know. (Tr. 68, 103.) Even assuming, as the Petitioner urges (Brief of Petitioner, p. 14.) that 16 voters were *possibly*<sup>12</sup> disenfranchised and if they had voted, they would have voted for the Petitioner, the Petitioner would then have only had 66 votes, which would not be sufficient in number to change the results of the election.<sup>13</sup> I recommend overruling this objection.

### RECOMMENDATION

On the basis of the foregoing, it is the conclusion and the recommendation of the undersigned that Petitioner's Objections 1-5 should be overruled in their entirety, and that a Certification of Results should issue.<sup>14</sup>

Dated at Chicago, Illinois this 28<sup>th</sup> day of August 2014.

  
Renée D. McKinney, Hearing Officer  
National Labor, Relations Board  
Region 13  
209 South LaSalle Street, Suite 900  
Chicago, Illinois 60604

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<sup>12</sup> The Petitioner's reliance on *Pea Ridge Iron Ore Company, Inc.*, 335 NLRB 161 (2001) is misplaced. That case stands for the proposition that when the polls are opened late, if there is a possibility that employees were thereby disenfranchised and the election was decided by one vote, the election should be re-run. Here, even aside from the basic facts, the margin of no-votes to yes-votes in *Pea Ridge* compared to the instant case makes the case inapposite.

<sup>13</sup> The Petitioner contends (Brief of Petitioner, p. 14.) that it has decisive evidence in Petitioner's Exhibit 8 that all of the conduct complained of in its objections interfered with employee free choice: it obtained 75 signatures on its "Get Out the Vote" petition ending two weeks before the election was held, yet only 51 employees voted in its favor. However, the Board has adopted an administrative law judge's reasoning that the fact that employees felt free to disregard their choice to sign the "vote yes" petition and vote against the petitioner is an indication that there was no interference with free choice. *Gormac Custom Mfg., Inc.*, 335 NLRB 1192, 1200 n.15 (2001) (employer objection to union's "vote yes" petition) (citing *Maremont Corp. v. NLRB*, 177 F. 3d 573, 578-579 (6th Cir. 1999)). As the *Gormac* judge explained, a "vote yes" petition is not a commitment to support a union, but is understood by the employees to be a partisan document. 335 NLRB at 1200 n. 15.

<sup>14</sup> Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington by **September 11, 2014**. Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in this report, are not part of the record before the Board unless appended to the exceptions or opposition thereto that the party filed with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying on the evidence in any subsequent unfair labor practice proceeding.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the Hearing Officer's Report on Objections in case Illinois Central School Bus, LLC, Case Number 13-RC-127807, has been electronically filed and served regular mail this 28<sup>th</sup> day of August, 2014, upon the following parties:

**Electronically:**

Gary Shinnars, Executive Secretary  
National Labor Relations Board  
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Washington, D.C. 20570-0001

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Cass T. Casper Attorney  
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/s/ Renée D. McKinney  
Renée D. McKinney, Hearing Officer  
National Labor, Relations Board  
Region 13  
209 South LaSalle Street, Suite 900  
Chicago, Illinois 60604

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 13**

In the Matter of:	:	
Illinois Central School Bus, LLC	:	
Employer,	:	Case No. 13-RC-127807
	:	
and	:	
	:	
INTERNATIONAL BROTHERHOOD OF	:	
TEAMSTERS, LOCAL UNION NO. 777,	:	
Petitioner	:	

**OBJECTIONS TO THE ELECTION**

Teamsters Local 777 objects to the election conducted in the above matter on **June 4, 2014** on the following grounds:

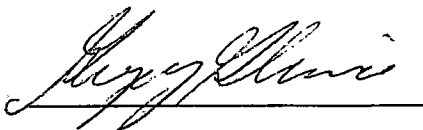
**Electioneering and other conduct near the polls:**

1. During the AM election period, Bus 1198 was parked outside the polling place location visibly displaying "vote no, no union, no strikes, no union rules" to the eligible voters as they walked into the building to vote, in order to intimidate and persuade the voters from supporting the union.
  
2. During the **morning** election period and outside the entrance to the polling place, Cindy Sosnowski, contract manager, was engaging employees and electioneering.

3. During the afternoon election period and outside the building entrance to the polling place, Cindy Sosnowski, was present and surveying the area.
4. The election was conducted in a location other than the one that was stipulated to. The Union strongly objected to this at the pre-election conference. The stipulated place was "Upstairs Safety Training Room". The election was held in a room that made you walk through this room and go past the Human Resources Dept and into a storage area to vote.
5. During the election period and outside the entrance to the polling places, Harrison street was shut down by the police approximately between 12:05 pm and 1:30 pm. The entrance for the employee parking lot and all the buses is on this street. Traffic was prevented from entering or exiting this area. The stipulated time for the second session of the election was between 12:00 pm and 4:00 pm.

By the above and other objectionable conduct, the laboratory conditions required by the Board in the election were breached.

The Union respectfully requests that the Regional Director set aside the election conducted on **June 4, 2014** and direct a second election.



Gregory Glimco  
Secretary-Treasurer  
Teamsters Local 777

Dated: June 10, 2014